

§ 1000.30

under Public Law 93-638, as amended (25 U.S.C. 450 *et seq.*).

§ 1000.30 What prohibitions regarding conflict of interest are applicable?

(a) *Applicability.* In the procurement of supplies, equipment, other property, construction and services by recipients and subrecipients, the conflict of interest provisions of 24 CFR 85.36 shall apply. In all cases not governed by 24 CFR 85.36, the following provisions of this section shall apply.

(b) *Conflicts prohibited.* No person who participates in the decision-making process or who gains inside information with regard to NAHASDA assisted activities may obtain a personal or financial interest or benefit from such activities, except for the use of NAHASDA funds to pay salaries or other related administrative costs. Such persons include anyone with an interest in any contract, subcontract or agreement or proceeds thereunder, either for themselves or others with whom they have business or immediate family ties. Immediate family ties are determined by the Indian tribe or TDHE in its operating policies.

(c) The conflict of interest provision does not apply in instances where a person who might otherwise be included under the conflict provision is low-income and is selected for assistance in accordance with the recipient's written policies for eligibility, admission and occupancy of families for housing assistance with IHBG funds, provided that there is no conflict of interest under applicable tribal or state law. The recipient must make a public disclosure of the nature of assistance to be provided and the specific basis for the selection of the person. The recipient shall provide the appropriate Area ONAP with a copy of the disclosure before the assistance is provided to the person.

§ 1000.32 May exceptions be made to the conflict of interest provisions?

(a) Yes. HUD may make exceptions to the conflict of interest provisions set forth in §1000.30(b) on a case-by-case basis when it determines that such an exception would further the primary objective of NAHASDA and the effective and efficient implementa-

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tion of the recipient's program, activity, or project.

(b) A public disclosure of the conflict must be made and a determination that the exception would not violate tribal laws on conflict of interest (or any applicable state laws) must also be made.

§ 1000.34 What factors must be considered in making an exception to the conflict of interest provisions?

In determining whether or not to make an exception to the conflict of interest provisions, HUD must consider whether undue hardship will result, either to the recipient or to the person affected, when weighed against the public interest served by avoiding the prohibited conflict.

§ 1000.36 How long must a recipient retain records regarding exceptions made to the conflict of interest provisions?

A recipient must maintain all such records for a period of at least 3 years after an exception is made.

§ 1000.38 What flood insurance requirements are applicable?

Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128), a recipient may not permit the use of Federal financial assistance for acquisition and construction purposes (including rehabilitation) in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the following conditions are met:

(a) The community in which the area is situated is participating in the National Flood Insurance Program in accord with section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106(a)), or less than a year has passed since FEMA notification regarding such flood hazards. For this purpose, the "community" is the governmental entity, such as an Indian tribe or authorized tribal organization, an Alaska Native village, or authorized Native organization, or a municipality or county, that has authority to adopt and enforce flood plain management regulations for the area; and

(b) Where the community is participating in the National Flood Insurance

Program, flood insurance on the building is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012(a)); provided, that if the financial assistance is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan.

§ 1000.40 Do lead-based paint poisoning prevention requirements apply to affordable housing activities under NAHASDA?

Yes, lead-based paint requirements apply to housing activities assisted under NAHASDA. The applicable requirements for NAHASDA are HUD's regulations at part 35, subparts A, B, H, J, K, M and R of this title, which implement the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822–4846) and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856).

[64 FR 50230, Sept. 15, 1999; 65 FR 3387, Jan. 21, 2000]

§ 1000.42 Are the requirements of section 3 of the Housing and Urban Development Act of 1968 applicable?

(a) *General.* Yes. Recipients shall comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and HUD's implementing regulations in 24 CFR part 135, to the maximum extent feasible and consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 3 provides job training, employment, and contracting opportunities for low-income individuals.

(b) *Threshold requirement.* The requirements of section 3 apply only to those section 3 covered projects or activities for which the amount of assistance exceeds \$200,000.

§ 1000.44 What prohibitions on the use of debarred, suspended, or ineligible contractors apply?

In addition to any tribal requirements, the prohibitions in 2 CFR part

2424 on the use of debarred, suspended, or ineligible contractors apply.

[72 FR 73497, Dec. 27, 2007]

§ 1000.46 Do drug-free workplace requirements apply?

Yes. In addition to any tribal requirements, the Drug-Free Workplace Act of 1988 (41 U.S.C. 701, *et seq.*) and HUD's implementing regulations in 24 CFR part 21 apply.

[72 FR 73497, Dec. 27, 2007]

§ 1000.48 Are Indian preference requirements applicable to IHBG activities?

(a) *Applicability.* Grants under this part are subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) provides that any contract, subcontract, grant or subgrant pursuant to an act authorizing grants to Indian organizations or for the benefit of Indians shall require that, to the greatest extent feasible:

(1) Preference and opportunities for training and employment shall be given to Indians, and

(2) Preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452).

(b) *Definitions.* (1) The Indian Self-Determination and Education Assistance Act defines "Indian" to mean a person who is a member of an Indian tribe and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community including any Alaska Native village or regional or village corporation as defined or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(2) In section 3 of the Indian Financing Act of 1974 "economic enterprise" is defined as any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that Indian ownership must constitute not less than 51 percent of the enterprise. This